

## Memorandum


**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Dan McFadden  
Deputy City Manager

**SUBJECT:** Sunshine Reforms Update

**DATE:** August 9, 2006

Approved



8/15/06

**COUNCIL DISTRICT:** City-Wide

### **RECOMMENDATION**

Accept the update on the implementation of 14 reforms referred to staff, and a summary on the actions and work plan of the Sunshine Reform Task Force.

### **BACKGROUND**

At its March 21, 2006 meeting, the City Council held a public hearing and considered a number of proposed Sunshine reforms designed to promote open, accessible, and inclusive government. At the completion of the public hearing, the Council directed staff to develop a work plan with specific recommendations regarding the implementation of 22 Sunshine reform measures focused in three areas: 1) Public Information; 2) Neighborhood Participation; and, 3) Government Accountability. The City Council further directed staff to develop a task force through which the public could review these and any other Sunshine reforms that it determines worthy of consideration. Subsequently, at its April 18<sup>th</sup> meeting, the City Council approved the formation of the *Sunshine Reform Task Force* to review proposals and make recommendations to the City Council regarding their adoption and implementation. On May 23, 2006, the City Council referred nine proposals to the *Sunshine Reform Task Force* and directed staff to proceed with a pilot program to implement 14 proposals. Staff was directed to report back to Council January 2007; the following is the first interim report.

## **ANALYSIS**

Of the 14 pilot reform proposals referred to staff, seven have been implemented and seven are in process of being completed. Attachment A provides a detailed status on each of the reforms. In June 2006, the City Council approved staff's implementation strategy on three Sunshine Reforms:

- **Public Information Reform #4** – Noticing of Council items with expenditures over \$1 million;
- **Public Information Reform #11** – Establish criteria of items of “significant public interest” and require additional notification consistent with Council Policy 6-30; and,
- **Government Accountability Reform #3** - Expenditures of \$1 million or more and “significant public interest” agenda items include a Policy Alternative Recommendation, description of why alternative was rejected, and a cost-benefit analysis.

During the month of July and August, staff conducted more than 15 training sessions for Departments on the reforms referenced above and also addressed the following:

- **Neighborhood Participation Reform #4** – Notification to City Commissions when items originating in the commission will be heard by the Council;
- **Government Accountability Reform #4** – Staff memo to include City staff contract for public questions.

The reform listed below was completed during the budget process, and Public Information Reform #7 will also be heard on today's agenda.

- **Neighborhood Participation Reform #2** - Citywide budget briefing and 4 budget hearings to encourage greater community contribution to established City priorities;
- **Public Information Reform #7** - Disclosure of information on complaints received through the Fraud and Audit Hotline.

These reforms are well underway and fully implemented. Staff will report on issues related to the pilot program in the Sunshine Referrals Status Report that will come before council in early 2007.

## **Sunshine Reform Task Force**

The Sunshine Reform Task Force (Task Force) convened its first meeting on June 14, 2006. The on-going meeting schedule for the Task Force is the 1<sup>st</sup> and 3<sup>rd</sup> Thursday of every month through December 21, 2006 (Room 118 – City Hall). Initially, the Task Force engaged in a number of targeted discussions to define their governance structure, including: establishing a decision rule, adopting a policy for filling vacancies and absences, setting protocols for determining agendas, and obtaining public input and testimony. To ensure that all work on behalf of the Task Force is fair, ethical, and complies with the letter and spirit of the law, the Task Force adopted a Code of Conduct.

In addition, the Task Force established a process for receiving additional Sunshine Reform proposals. Due to the number and complexity of proposals currently before the Task Force, a deadline of August 31, 2006, was established for additional proposals from the Task Force membership, City Council, and the public. The invitation to submit proposals was posted on the City's web-site and a press release was distributed in late July 2006.

The Task Force selected Ed Rast as Chairperson and Dan Pulcrano as Vice Chair. Due to the resignations of two Task Force members (Clark Williams, Board and Commission Representative, and Blanca Alvarado, Former Councilmember), David Roberson, member of the Housing Committee, and Margie Matthews, former City Councilmember, joined the Task Force. The vacancies were filled by returning to the original pool of names and drawing for a vacancy in the Mayor or Council nominated seats.

After a thoughtful discussion on the complexity of issues, the Task Force agreed to a work plan that spanned seven major categories and also agreed to deliberate the categories at a regularly scheduled Task Force meeting. Below are the major categories and dates the Task Force has scheduled to hear the items:

- |                                   |                    |
|-----------------------------------|--------------------|
| ▪ Public Meetings                 | August 17, 2006    |
| ▪ Public Information and Outreach | September 7, 2006  |
| ▪ Closed Session                  | September 21, 2006 |
| ▪ Public Records                  | October 5, 2006    |
| ▪ Technology                      | TBD                |
| ▪ Enforcement                     | TBD                |
| ▪ Ethics and Conduct              | TBD                |

Staff will return to the City Council with the draft recommendations (Ordinance) being considered by the Task Force for a study session in mid November 2006.

### **POLICY ALTERNATIVES**

Not applicable

### **PUBLIC OUTREACH/INTEREST**

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or great.
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

Although this item does not meet the above criteria, staff has taken a number of steps to ensure that information is easily accessible to the public. All Sunshine Reform Task Force meetings are now televised on CivicCenter Television (Ch 26). On the City's webpage, we have created a link on the home page that takes users directly to a new Sunshine Reform Task Force section that includes all information and documents related to the Task Force and where agenda and reports are posted. Finally, to assist the Task Force in reaching out to the public, staff has distributed a press release requesting public input and establishing an August 31<sup>st</sup> deadline for the receipt of additional proposals.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office, the City Clerk's Office, the Redevelopment Agency, and shared with the various departments involved in the implementation of the reforms, as well as the Sunshine Reform Task Force.

### **FISCAL POLICY ALIGNMENT**

This action is consistently aligned with Council approved direction to implement the Sunshine Reforms.

### **COST SUMMARY/IMPLICATIONS**

Staff is attempting to pull together administrative costs associated with the City's current Sunshine efforts. We can identify staff assigned to outreach and public information and direct costs associated with noticing, mailings, and web-site postings. However, the process established for tracking Public Records Act (P.R.A.) requests was found to be insufficient; therefore, staff is developing a mechanism by which to systematically capture costs associated with responding to P.R.A requests. Staff will attempt to capture these costs at the departmental level for September – November 2006 using a standardized form so that this financial impact can be assessed City-wide.

### **BUDGET REFERENCE**

On May 23, 2006 the City Council authorized \$200,000 to cover the expenses of the Sunshine Reform Task Force. To date \$17,323 has been expended primarily on a facilitator, staff, supplies and meeting costs e.g video streaming. The expenses for the Task Force projected through December 2006 are estimated to total 75,000. At the completion of the work by the Task Force there will be implementation costs to cover web-site updating, software, departmental staff training, printing, publication, and promulgation of Sunshine Ordinance and program. These implementation costs are estimated to be approximately \$100,000. The original project authorization appears to be adequate.

Honorable Mayor and City Council  
Sunshine Reform Update  
August 9, 2006  
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A handwritten signature in dark ink, appearing to read 'Dan McFadden', with a stylized, flowing script.

Dan McFadden  
City Manager

For questions, please contact Eva Terrazas,  
Community Relations Officer, RDA/CMO 408.535.8119.

Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
		Staff	Rules	Council	Complete		
<b>Public Information Reform #4</b> – A detailed accounting of all City contracts and expenditures of \$1 million or more shall be made available to the City Council and public, on-line, no later than 2 weeks prior to being heard. Otherwise, a 2/3 majority vote of the Council would be required to hear an item that was received less than 2 weeks prior to the hearing.	<p>Staff developed an early distribution process whereby memos that meet the above criteria will be distributed via Information Memos on the Tuesday, 14 day prior to the relevant Council/Board Meetings. This approach will require that staff verbally note for the Rules Committee, when reviewing the agenda, which items were distributed in the early distribution packet; and, further, that the Rules Committee confirm that the items distributed early be placed on the final agenda.</p> <p>In addition, staff has incorporated cost summary templates in the Cost Implication section of the Council/Board Memo Formats to be used for both construction and professional services. This will address the direction to include a detailed accounting of these expenditures for the Public and Council. The early distribution packet will also be posted on-line, upon approval of the final Council Agenda (13 days prior to the Council Meeting.)</p> <p>In cases where there is not a quorum for a 2/3 majority vote or if an item is not approved to be heard, staff is requesting that Council provide the disposition of the item and either refer the item back to the Rules Committee for placement on a future agenda or defer the item directly on a future agenda.</p>				■	Completed (June 2006)	<a href="http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/062106/Rules062106_G4.pdf">http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/062106/Rules062106_G4.pdf</a>
<b>Public Information Reform #7</b> - Disclose statistical information on complaints received through the Fraud and Audit Hotline, excluding names and any other confidential information. This information should be reported to the Council.	<p>The City maintains a fraud and audit hotline. A one year pilot is underway with Council direction to report back at its completion. The pilot is scheduled to end July 31, 2006. Staff has completed the one-year pilot program and is providing a report to the City Council on the August 29, 2006, agenda. The report contains information on concerns received from City employees and the public that include violation of City Policy, theft, fraud, customer service, safety, or other legal and compliance issues.</p>				■	Completed (August 2006)	

Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
		Staff	Rules	Council	Complete		
<b>Public Information Reform #8</b> - Require Council member and appointee Fair Political Practices Commission Statements of Economic Interest (FPPC Form 700) filings (after redacting personal contact information) and Conflict of Interest declarations to be posted and indexed online, including all conflicts outside of the City of San José's jurisdiction.	The City Clerk has negotiated and executed a contact agreement with NetFile to enable online filing and viewing of Statements of Economic Interest, the City's Family Gift Report and the new Conflict of Interest Declaration submitted by the Mayor, Councilmembers, Appointees and Planning Commissioners. Staff anticipates an implementation target date of December 2006 for scanning, posting, and linking on-line forms on file in the Office of the City Clerk. The City Attorney's Office also is developing a standardized declaration form and protocols for disclosing a conflict of interest at least 24 hours in advance of a public meeting (See PIR #9 below). Training for mandated filers for online filing of conflict of interest forms is expected to occur early March 2007.	■				December 2006 - March 2007	
<b>Public Information Reform #9</b> - Any Council member or board/commission member claiming a conflict of interest on a vote must publicly disclose the basis of the claim by filing a conflict of interest declaration with the City Attorney and City Clerk 24 hours prior to start of the council meeting at which the item will be heard.	This reform will require Councilmembers to complete review of all council items and submit conflict of interest declarations to the City Clerk's office 24 hours before council meetings to ensure conflicts have been identified. The City Council took action on May 23, 2006 to expand this requirement to all Boards and Commissions. Staff will return to Council in September 2006 with a recommended Council Policy to establish this requirement and will also develop uniform procedures. Additionally, staff will create a standard declaration form and work with the City Clerk to have the information posted/available online.	■				September 2006	

Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
		Staff	Rules	Council	Complete		
<b>Public Information Reform #10</b> - Disclose the calendars of the Mayor and Councilmembers quarterly, redacted for personal information.	<p>To assist the Mayor and Council in determining which meetings can appropriately be redacted, staff recommends following the model used by San Francisco, which appears to be one of the few California cities that requires the disclosure of elected officials' calendars. In San Francisco, an official's public calendar may exclude "... purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city." Examples of the sorts of events that may properly be excluded from public calendars would be: medical appointments, personal meetings such as parent-teacher conferences, and certain social events such as attending one's high school reunion.</p> <p>The Information Technology department has developed a process using existing technology to integrate this requirement seamlessly with day-to-day activities. Each office will be able to publish their calendars from the same software they use to maintain their existing calendars after redacting any appropriate information. Training on how to post the calendars will begin August 2006 and final implementation is expected to begin in September 2006.</p>	■				Aug. - Sept. 2006	



Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
		Staff	Rules	Council	Complete		
<b>Public Information Reform #11</b> - Establish criteria that can be used by the Rules Committee to determine if an item is of "significant public interest" and requires additional notification or public outreach consistent with definitions and procedures outlined in City Council Policy 6-30 "Public Outreach Policy for Pending Land Use and Development Proposals."	<p>Staff has developed broad criteria for items of Significant Public Interest, which are to be used to define such items:</p> <ol style="list-style-type: none"> <li>1. Criteria 1: Requires Council or board action on the use of public funds equal to \$1,000,000 or greater;</li> <li>2. Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City*</li> <li>3. Criteria 3: Consideration of proposed changes to service delivery, program, staffing that may have impacts to community services and have been identified by staff, Council/Board or a community group that requires special outreach.</li> </ol> <p>Staff has developed a matrix that summarizes the additional notification that would be required for future Council items that meet one or more of the above criteria. The Public Outreach section of the Council Memo Format has been revised to include a description of the additional notification that would be needed for the item. (There is a problem applying Council Policy 6-30, which is site specific to City-wide issues.)</p>				■	Completed (June 2006)	<a href="http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/062106/Rules062106_G4.pdf">http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/062106/Rules062106_G4.pdf</a>
<b>Public Information Reform #12</b> - Post the City Council Policy Manual online.	To implement this reform, staff is conducting a comprehensive review of Council Policies and recommends initially posting only those that are current with remaining policies to be reviewed by the Rules Committee prior to full Council consideration. Starting in August 2006 staff will begin bringing policies to the Rules Committee, a few at a time, to make the workload of the Committee manageable. The City Clerk has released an RFQ for codification posting of the Council Policy Manual and funds have been identified for the project.	■				June 2006-TBD	

Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
		Staff	Rules	Council	Complete		
<b>Neighborhood Participation Reform #2</b> - Provide an annual city-wide budget briefing followed by 4 budget hearings throughout San José, in order to encourage greater community contribution to established City priorities. Appropriate consideration shall be made to ensure that meetings are accessible to the residents of San José in relation to the time, date, and location of the hearings.	<p>The 2006-2007 Proposed Operating Budget was released on May 1, 2006. Study sessions were held in May and were open to the public. A Budget Study Session was held in March and four public hearings were held in June. To implement this reform staff conducted six additional public meetings at community locations in May and early June 2006. Three of these meetings were advertised in local English, Spanish, and Vietnamese media. Three additional budget presentations were given to NAC leaders, SNI PAC, and at the Sikh Temple in Evergreen. The meetings were held at the following locations:</p> <ul style="list-style-type: none"> <li>• Saturday, April 29, noon – 3pm, City Hall Council Chambers, Council District 3</li> <li>• Saturday, May 6, 11am – 1pm, Almaden Winery, Council District 10</li> <li>• Monday, May 15, 6:30 – 8:30pm, Shirakawa Community Center Council District 7</li> <li>• Tuesday, May 23, 6:30 – 8:30pm, West San Jose Community Center, Council District 1</li> <li>• Monday, June 5, 7:00 – 8:00pm, Santa Teresa Library, Council District 2</li> <li>• Monday, June 12, 5:30 – 6:30pm, City Hall Council Chambers Council District 3</li> </ul>				■	Completed (June 2006)	
<b>Neighborhood Participation Reform #3</b> - Require the City Council and Redevelopment Agency to hold Public Priority Setting Hearings in the beginning of odd years to coincide with City Council member appointments to standing committees.	<p>The City currently does not hold formal public priority setting hearings. Staff conducts new Councilmember orientations whereby new Councilmembers are briefed on City Service Area priorities. To implement this reform, staff would model a Policy Priority Setting Session based on City Service Area briefings that the new Councilmembers receive upon entering office and align the session with the budget process. Staff will hold an internal meeting in August to begin planning for the policy priority session. Staff intends to bring a proposal to Council in November/December timeframe. Staff recommends utilizing a professional facilitator to guide the discussions during these meetings and identifying ways to link to the budget process.</p>	■				August– December 2006	

Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
		Staff	Rules	Council	Complete		
<b>Neighborhood Participation Reform #4</b> - Require notification to City commissions when items originating in the commission are being heard by the Council.	To implement this reform staff has updated the Council Memo Format and Yellow submittal form to reflect Commission Coordination. Departments will be required to fill out the form and to note in the Coordination Section of the Council Memo the commission notification that took place.				■	Completed (June 2006)	
<b>Neighborhood Participation Reform #5</b> - Expand the speaking time from 2 minutes to 4 minutes for "Neighborhood Group or Community Association Designees" (City Council Policy 6-30) or those subject to an eminent domain action, clarify the speaking time allowed to a representative from an advisory commissions, and create a strategy to address recently identified challenges to public participation for those with disabilities.	The Council Rules of Conduct Resolution gives the Mayor the discretion to set the time limits. Cities generally strive to give all persons equal time, with the exception of an applicant or appellant in a land use matter. Staff is evaluating the best practices of other cities and will bring forward a recommended time to establish new speaker time limits and update brochures, speaker cards, and other information provided to the public on the participation process as appropriate. This item is currently being reviewed by the Task Force.	■				September 2006	
<b>Government Accountability Reform #3</b> - City Manager and Department Staff Reports for expenditures of \$1 million or more and "Significant Public Interest" agenda items shall provide the following: (a). a new section entitled, "Policy Alternative Recommendations" that lists all the viable city staff options that have been discussed, but were not recommended by the City Manager or Department staff; (b). a brief description of the reasons the alternative was rejected, (c). a cost-benefit analysis and economic impact report to include, but not limited to, the following: how the expenditure aligns with and affects the City's policy goals, fiscal priorities, long term strategy, and economic development goals and priorities.	Staff has revised the current Council Memo Format to include new sections on Policy Alternatives and Fiscal/Policy Alignment and will provide training to the organization in June - July with implementation in August. The Redevelopment Agency will mirror this memo format. The Policy Alternatives section will include a full description of the alternatives explored and the pros and cons of each, as well as why staff is making their recommendation. Staff will also be required to provide information on how expenditures and policy decisions align with the City's overall policy goals, fiscal priorities and economic development strategy as well as any cost-benefit and economic impact information. This section will be based on such guiding principles found in the City's General Plan, Economic Development Strategy, overall Budget Strategy and Redevelopment Plans and Implementation Plans and other existing guiding principle documents.				■	Completed (June 2006)	<a href="http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/062106/Rules062106_G4.pdf">http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/062106/Rules062106_G4.pdf</a>
<b>Government Accountability Reform #4</b> - Require every Staff memo to have a City staff contact for public questions.	The City Manager's Office has issued new instructions to the Administration on the "signature block" format. The new requirement includes information on the City staff contact's name, title, and telephone number.				■	Completed (June 2006)	

Reforms	Implementation	Implementation Status				Schedule	Supporting Documents								
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<b>Public Information Reform #2</b> - Establish a single City of San Jose's Master Online Calendar where all city activities, events and meetings of committees, boards, commissions and advisory bodies and events are posted (Public Information Reform #2).	<p>As part of operational improvements at City Hall, staff is procuring a <u>new reservation system and a master calendaring</u> component has been added to the procurement to provide the technology necessary to create a Master Calendar. The new technology will provide users with the capability of searching for a meeting by date, meeting title, meeting subject and location. In addition, the technology will allow users to "subscribe to a particular meeting so that changes and updates would be automatically emailed. The following timeline has been established for implementation of the technology element of this plan.</p> <table><tr><td>Mid August</td><td>Vendor Selection &amp; contract Negotiations</td></tr><tr><td>Mid September</td><td>Council Approval</td></tr><tr><td>October – November</td><td>Configuration, Testing, Training</td></tr><tr><td>November- December</td><td>Implementation</td></tr></table> <p>Staff has established criteria to define which meetings should be included on the Master Calendar. In doing so, we considered the City Council's desire to be as broad and inclusive as possible, and the Council-approved e-Government policy that establishes guidelines to ensure that the City maintains the ability to control content on its own website. The e-Government policy was adopted in recognition of the fact that opening the City's website to a broad range of content by or links to other organizations can potentially transform the website into a public forum. As a public form, anyone would have the right to post information and links on the website and, if denied that right, might subject the City to a claim of discrimination.</p> <p>The following meetings would be included on the calendar:</p> <ul style="list-style-type: none"><li><u>Official City Meetings</u> – In addition to City Council and Council Committee meetings, this category includes</li></ul>	Mid August	Vendor Selection & contract Negotiations	Mid September	Council Approval	October – November	Configuration, Testing, Training	November- December	Implementation					August – December 2006	
Mid August	Vendor Selection & contract Negotiations														
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Reforms	Implementation	Implementation Status				Schedule	Supporting Documents
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<b>Public Information Reform #2 (cont'd)</b> - Establish a single City of San Jose's Master Online Calendar where all city activities, events and meetings of committees, boards, commissions and advisory bodies and events are posted.	<p>Similarly, a Master Calendar that includes community events that do not have a direct connection to the City or a stated City policy or purpose, may pose the same risks. The following meetings would be included on the calendar:</p> <ul style="list-style-type: none"><li>• <u>Official City Meetings</u> – In addition to City Council and Council Committee meetings, this category includes meetings of City Boards and Commissions, as well as any other entity that is formed as a result of Council action.</li><li>• <u>Other Public Meetings</u> – Meetings held by non-City elected officials who are holding their meeting in a facility owned and operated by the City.</li><li>• <u>City Events</u><ul style="list-style-type: none"><li>○ Ground breakings and dedications:<ul style="list-style-type: none"><li>▪ when the project is funded all or in part by the City or SJRA</li><li>▪ when the project is funded by another public agency but benefits the City of San Jose.</li></ul></li><li>○ Neighborhood events – when supported by some city funds.</li><li>○ Candidate Forums –when held in a city-owned and operated facility and all candidates are invited to participate.</li></ul></li></ul> <p>The Sunshine Reform Task Force reviewed and approved the staff recommendation at its August 3, 2006 meeting.</p>					August – December 2006	